

APPOINTMENT OF RETIRED COMMISSIONED OFFICERS  
TO CIVILIAN POSITIONS

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OCTOBER 18 (legislative day, OCTOBER 12), 1943.—Ordered to be printed

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Mr. REYNOLDS, from the Committee on Military Affairs, submitted the following

## REPORT

[To accompany S. 865]

The Committee on Military Affairs, to whom was referred the bill (S. 865) suspending for the duration of the war the limitations upon the compensation of certain retired personnel employed by the Government, having considered the same, report favorably thereon with the recommendation that it do pass with the following amendments:

(1) Change the title of the bill to read as follows:

A bill to remove certain restrictions relating to the appointment of retired commissioned officers to civilian positions, and for other purposes.

(2) Strike out all after the enacting clause and insert in lieu thereof the following:

That, notwithstanding the limitations of existing law, any commissioned officer on the retired list of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service, appointed to a civilian office or position in or under the executive branch of the Government or the municipal government of the District of Columbia, may receive the pay attached to such civilian position or his retired pay, whichever he may elect; but he may not receive both the pay of the civilian position and retired pay except as authorized by law.

SEC. 2. This Act shall remain in force during the present war and for a period of six months following the termination of the war.

This bill would remove temporarily the restrictions of existing law relating to the appointment of retired officers to civilian positions under the Government. The act of July 31, 1894, as amended, provides that no person who holds an office the salary or annual compensation attached to which amounts to the sum of \$2,500 shall be appointed to or hold any other office to which compensation is attached unless specially authorized thereto by law. The act expressly excludes retired officers of the Army, Navy, Marine Corps, or Coast Guard whenever they may be elected to public office or whenever the President shall appoint them to office by and with the advice and consent

of the Senate. Also, retired enlisted men of the services retired for any cause, and retired officers who have been retired for injuries received in battle or for injuries or incapacity incurred in line of duty, are not construed to hold or to have held an office during their retirement.

With the exceptions noted above, an officer whose retired pay amounts to \$2,500 per annum cannot be appointed to or hold any other office, to which compensation is attached, under the Federal Government unless there is a special statute authorizing the holding of such office. In this connection, the term "office" as used in this statute is a broad general term which has been construed to include any person holding a place or position under the Federal Government and paid from Government funds. Even though an officer's retired pay amounts to less than \$2,500 per annum, he cannot be appointed to another office under the Government if the salary or annual compensation attached to the other office amounts to \$2,500. An officer who is precluded by this statute from being appointed to a particular office cannot remove the inhibition of the statute by waiving or relinquishing his retired pay.

The bill has the salutary effect of making available to the Government the services of any officer retired from the armed forces. In view of the existing manpower problem no legislative prohibitions against the appointment and use by the Government of available personnel should be permitted to remain in force.

Retired officers appointed to civilian offices or positions under authority of this bill may receive the pay attached to such civilian position or retired pay, whichever they elect. But they may not receive both the pay of the civilian position and retired pay except as authorized by law. Accordingly, the restrictions on the amount of compensation which may be received by retired officers are not altered. The limitation of the amount of pay which a retired officer may receive when he holds a civilian position under the Government is set by section 212 of Public Law 212, Seventy-second Congress, as amended. Under that section no person holding a civilian office or position, appointive or elective, under the United States Government or the municipal government of the District of Columbia or under any corporation, the majority of the stock of which is owned by the United States, is entitled to retired pay from the United States for or on account of services as a commissioned officer at a rate in excess of an amount which, when combined with the annual rate of compensation from such civilian office or position, makes the total rate from both sources more than \$3,000.

A person affected by section 212 (1) may, if his retired pay and the pay of the civilian office each exceed \$3,000 per annum, receive either his retired pay or the pay of the civilian office, as he may elect; (2) may not, if his retired pay is less than \$3,000 per annum but the pay of the civilian office amounts to or exceeds \$3,000 per annum, receive any retired pay while holding the civilian office; or (3) may, if neither his retired pay nor the pay of the civilian office amounts to \$3,000 per annum, receive the pay of the civilian office plus a sufficient amount of his retired pay to make the total rate from both sources \$3,000 per annum. No injustice or hardship can be perceived in the operation of this law.

Representatives of the War Department testified in support of this measure before the committee on October 15, 1943, stating the Department did not favor the enactment of the original provisions of the proposed measure but recommended the draft as submitted in its letter of April 29, 1943.

The committee accepted the Department's recommendation, and commends the measure, as amended, to the favorable consideration of the Senate.

The War Department letter follows:

WAR DEPARTMENT,  
Washington, April 29, 1943.

HON. ROBERT R. REYNOLDS,  
*Chairman, Committee on Military Affairs,  
United States Senate.*

DEAR SENATOR REYNOLDS: The War Department is opposed to the enactment of S. 865, Seventy-eighth Congress, a bill suspending for the duration of the war the limitations upon the compensation of certain retired personnel employed by the Government.

S. 865 if enacted would suspend, for the duration of the present war, the provisions of section 212 of Public, No. 212, Seventy-second Congress, as amended (act, June 30, 1932, 47 Stat. 382, 406; act, July 15, 1940, 54 Stat. 760, 761; 5 U. S. C. 59a).

Under section 212 (a) of the act approved June 30, 1932, commonly called the Economy Act, no person holding a civilian office or position, appointive or elective, under the United States Government or the municipal government of the District of Columbia or under any corporation, the majority of the stock of which is owned by the United States, is entitled to retired pay from the United States for or on account of services as a commissioned officer at a rate in excess of an amount which, when combined with the annual rate of compensation from such civilian office or position, makes the total rate from both sources more than \$3,000. When the retired pay amounts to or exceeds \$3,000 per annum, such person may receive the retired pay or the pay of the civilian position or office, whichever he may elect.

The War Department does not favor a change in the provisions of the present law. A person affected by section 212 (a), (1) may, if his retired pay and the pay of the civilian office each exceed \$3,000 per annum, receive either his retired pay or the pay of the civilian office, as he may elect; (2) may not, if his retired pay is less than \$3,000 per annum but the pay of the civilian office amounts to or exceeds \$3,000 per annum, receive any retired pay while holding the civilian office; or (3) may, if neither his retired pay nor the pay of the civilian office amounts to \$3,000 per annum, receive the pay of the civilian office plus a sufficient amount of his retired pay to make the total rate from both sources \$3,000 per annum. No injustice or hardship can be perceived in the operation of this law.

The Bureau of the Budget advises that there is no objection to the submission of this report, as the enactment of the proposed legislation would not be in accord with the program of the President.

You are further advised that the enactment of legislation on the general subject in the form of the attached draft of bill would be in accord with the program of the President. This draft would remove temporarily the restrictions of existing law relating to the appointment of retired officers to civilian positions, while maintaining the present restrictions regarding the receipt of both retired pay and the pay of the civilian position.

Sincerely yours,

HENRY L. STIMSON,  
*Secretary of War.*

